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AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 939**

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**Introduced by Committee on Judiciary (Feuer (Chair), Brownley,  
Evans, Jones, Krekorian, Lieu, and Monning)**

February 26, 2009

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An act to amend Sections 215, 2030, 2032, 2034, 2330.3, 2400, 2403, 2450, 2451, 3027, 3121, 3150, 3151, 3183, 3557, 6323, and 6340 of, and to add Section 217 to, the Family Code, and to amend Section 328 of, and to add Section 827.10 to, the Welfare and Institutions Code, relating to family law proceedings.

### LEGISLATIVE COUNSEL'S DIGEST

AB 939, as amended, Committee on Judiciary. Family law proceedings.

Existing law prohibits after entry of judgment in specified family law proceedings in which there was at issue the visitation, custody, or support of a child, modification of the judgment or order, and prohibits a subsequent order in the proceedings, unless notice is served upon the party, as specified.

This bill would authorize a postjudgment motion to modify a custody, visitation, or child support order to be served on the other party by first-class mail or airmail, as specified.

Existing law provides that all relevant evidence is admissible in an action before the court, including evidence relevant to the credibility of a witness or hearsay declarant, subject to specified exceptions.

This bill would require the court in a family law action to receive all live, competent, and relevant testimony at a hearing of an order to show cause or notice of motion, unless the parties stipulate otherwise or the court makes a finding of good cause to refuse to hear the testimony.

Existing law provides that a court in a dissolution of marriage proceeding may order one party to pay the other party an amount that is reasonably necessary for attorney's fees or costs in order to ensure that each party has access to legal representation. Under existing law, the court shall base this determination on the respective incomes and needs of the parties and any factors affecting the parties' respective abilities to pay.

This bill would provide that, when a request for attorney's fees and costs is made, the court shall make findings regarding whether an award of attorney's fees and costs is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation. The bill would require the court to make an order awarding attorney's fees and costs if the findings demonstrate disparity in access and ability to pay. The bill would require the Judicial Counsel, by January 1, 2012, to adopt a rule of court and develop a form to implement this provision.

Existing law provides for summary dissolution proceedings if certain conditions exist at the time the proceeding is commenced, including that there are no children, as specified, neither party has any interest in real property, as specified, and the marriage is not more than 5 years in duration at the time the petition is filed. A proceeding for summary dissolution is commenced by filing a joint petition that is signed under oath by the husband and the wife, as specified.

This bill would revise the latter condition that must be met at the time a proceeding for summary dissolution is commenced to instead require that the marriage be not more than 5 years in duration as of the date of separation of the parties.

Existing law also provides that when 6 months have expired from the date of the filing of the joint petition for summary dissolution of marriage, the court may, upon application of either party, enter judgment

dissolving the marriage. At any time before the filing of the application for judgment, however, either party to the marriage may revoke the joint petition and thereby terminate the proceeding for summary dissolution.

This bill would authorize the court to enter judgment dissolving the marriage when 6 months have expired without requiring the application of either party, unless a revocation of the joint petition has been filed.

Existing law provides that in an action for dissolution of marriage, the court, upon motion, is required to hold a preliminary status conference to determine whether a case management plan will be ordered. Existing law further provides that no case management plan may be ordered absent the stipulation of the parties. Existing law also sets forth the content of case management plans.

This bill would delete the requirement that the parties stipulate to the case management plan.

The bill would also delete references to case management plans and would instead refer to family centered case resolution plans. The bill would revise the content of those plans and require the Judicial Council to adopt a statewide rule of court to implement these provisions.

Existing law provides that the court may appoint private counsel to represent the interests of a child in a custody or visitation proceeding if it determines that it would be in the best interest of the child. Existing law specifies the duties of a child's counsel, and grants the counsel the discretion to present the child's wishes to the court if he or she deems it appropriate.

This bill would require the court and counsel to comply with specified requirements if the court appoints private counsel pursuant to the provision described above. The bill would also require the child's counsel to present the child's wishes to the court if the child so desires.

Existing law authorizes a mediator to submit a recommendation to the court as to the custody of or visitation with a child, except as specified.

This bill would provide that the mediation and recommendation process shall be referred to as "child custody recommending counseling" and the mediator shall be referred to as a "child custody recommending counselor."

Under the Domestic Violence Prevention Act, the court in a protective order proceeding may issue an ex parte order granting temporary child custody and visitation to a party who has established a parent and child

relationship. Existing law provides that the court may not make a finding of paternity in this proceeding.

This bill would provide that the court in a protective order proceeding may accept a stipulation of paternity by the parties and, if paternity is uncontested, enter a judgment establishing paternity. The bill would provide that if the court in a protective order proceeding makes an order for custody, visitation, or support, the order shall, if the court so provides, survive the termination of the protective order.

Under existing law, if allegations of child sexual abuse arise during a child custody proceeding, the court may take reasonable, temporary steps to protect the child's safety, including requesting that the local child welfare services agency conduct an investigation of the allegations. Existing law provides that a social worker shall make an investigation of allegations of child abuse or neglect and shall determine whether it is appropriate to offer child welfare services to the family. Under existing law, juvenile case files are confidential, except as provided.

This bill would expand the scope of those provisions to apply to all allegations of child abuse. The bill would direct a social worker to draw no inference regarding the credibility of allegations of child abuse from the mere existence of a child custody or visitation dispute. The bill would also provide an exception to the confidentiality of child welfare agency records for certain participants in family law and probate guardianship cases *by authorizing the child welfare agency to permit inspection of, and to provide copies of, its records*, as specified.

~~By specifically authorizing certain persons to inspect and copy child welfare agency files, the bill would impose additional duties on county employees who would provide that service, thereby creating a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: *yes-no*.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2 following:

3     (a) Family law touches the most central aspects of Californians'  
4 lives, such as where, when, and how often a parent will see his or  
5 her child, the personal safety of the parent and child, how much  
6 child and spousal support one person will receive and the other  
7 will pay, and how the assets that the family has accumulated will  
8 be divided between the separating parties. These decisions can  
9 have a dramatic and lasting impact on people's lives.

10    (b) Faced with crowded family law calendars and the rising  
11 numbers of self-represented litigants, as over 70 percent of litigants  
12 in family law are unrepresented, many courts have adopted local  
13 rules and procedures in an attempt to more efficiently process the  
14 high volume of family law cases. While some of these rules and  
15 procedures have been innovative, others have created barriers to  
16 litigants getting their day in court, particularly litigants who are  
17 unrepresented. These barriers include drastically reducing live  
18 testimony in family law, which the California Supreme Court  
19 found, in its landmark decision *Elkins v. Superior Court* (2007)  
20 41 Cal.4th 1337, deprives family law litigants of due process  
21 protections. Access to justice requires that parties be able to  
22 appropriately address the court and present their cases.

23    (c) Family law cases involve an extraordinary range of issues,  
24 from the most simple, uncontested case with no children and no  
25 property to cases involving complex legal issues, highly personal  
26 and difficult conflicts over children, or serious issues of domestic  
27 violence and child safety. Unlike general civil, complex civil,  
28 juvenile, probate, and criminal cases, family law is the last general  
29 jurisdiction in California that does not provide a procedure for the  
30 fair, timely, and efficient disposition of a case. The courts cannot  
31 manage limited resources efficiently, nor serve the best interests  
32 of California's families and children, without the ability to manage  
33 the flow of cases through the courts. Under the current system, the  
34 parties, who are most often self-represented, must take the initiative  
35 to obtain appropriate orders and judgments in a complicated  
36 judicial process that very few litigants can understand, and they  
37 often fail to take the next step toward completing the case. As a  
38 result, it is not unusual for family law cases to linger in the court

1 for years. By eliminating the current ability of one party to drag  
2 out a case for years, the Legislature intends that all parties  
3 participate in, and benefit from, family centered case resolution.

4 (d) A fundamental responsibility of judges in family law cases  
5 is to protect the safety and well-being of children. Family courts  
6 are confronted with allegations of child abuse or neglect and must  
7 respond to these accusations appropriately. In order to help ensure  
8 that allegations of child abuse, neglect, and violence are fully  
9 investigated and that children are protected from harm, child  
10 welfare services should be required to fully investigate all  
11 allegations of this type, regardless of the existence of a family law  
12 dispute involving the same parties. No inference regarding the  
13 credibility of the allegations or the need for child welfare services  
14 shall be drawn from the existence of a child custody or visitation  
15 dispute.

16 (e) Courts appoint minor's counsel to provide representation  
17 for a child and to meet the need the court may have for additional  
18 information on which to base a difficult child custody decision.  
19 To be responsive to the complexities inherent in the cases that  
20 involve minor's counsel and the challenges attorneys, parties, and  
21 children may face when these appointments are made, the role of  
22 minor's counsel must be more clearly delineated and the  
23 responsibilities of minor's counsel more clearly defined so that  
24 there is greater transparency and clarity in order to provide the  
25 best possible representation for children in these matters.

26 (f) Given the lifelong impact of family law matters, legal  
27 assistance in these cases is critical. Unfortunately, over 70 percent  
28 of litigants in family law cases are unrepresented by counsel. While  
29 many cases involve parties who are all unrepresented, in some of  
30 these cases one party can afford counsel but the other cannot. These  
31 cases pose significant difficulties for the unrepresented litigant,  
32 the attorney, and the judicial officer. Representation for parties  
33 can be significantly improved in some of these cases if courts make  
34 early need-based attorney's fee awards.

35 SEC. 2. Section 215 of the Family Code is amended to read:

36 215. (a) Except as provided in subdivision (b), after entry of  
37 a judgment of dissolution of marriage, nullity of marriage, legal  
38 separation of the parties, or paternity, or after a permanent order  
39 in any other proceeding in which there was at issue the visitation,  
40 custody, or support of a child, no modification of the judgment or

1 order, and no subsequent order in the proceedings, is valid unless  
2 any prior notice otherwise required to be given to a party to the  
3 proceeding is served, in the same manner as the notice is otherwise  
4 permitted by law to be served, upon the party. For the purposes of  
5 this section, service upon the attorney of record is not sufficient.

6 (b) A postjudgment motion to modify a custody, visitation, or  
7 child support order may be served on the other party or parties by  
8 first-class mail or airmail, postage prepaid, to the persons to be  
9 served. For any party served by mail, the proof of service must  
10 include an address verification.

11 SEC. 3. Section 217 is added to the Family Code, to read:

12 217. (a) At a hearing on any order to show cause or notice of  
13 motion brought pursuant to this code, absent a stipulation of the  
14 parties or a finding of good cause pursuant to subdivision (b), the  
15 court shall receive any live, competent testimony that is relevant  
16 and within the scope of the hearing and the court may ask questions  
17 of the parties.

18 (b) In appropriate cases, a court may make a finding of good  
19 cause to refuse to receive live testimony and shall state its reasons  
20 for the finding on the record or in writing. The Judicial Council  
21 shall, by January 1, 2012, adopt a statewide rule of court regarding  
22 the factors a court shall consider in making a finding of good cause.

23 (c) A party seeking to present live testimony from witnesses  
24 other than the parties shall, prior to the hearing, file and serve a  
25 witness list with a brief description of the anticipated testimony.  
26 If the witness list is not served prior to the hearing, the court may,  
27 on request, grant a brief continuance and may make appropriate  
28 temporary orders pending the continued hearing.

29 SEC. 4. Section 2030 of the Family Code is amended to read:

30 2030. (a) (1) In a proceeding for dissolution of marriage,  
31 nullity of marriage, or legal separation of the parties, and in any  
32 proceeding subsequent to entry of a related judgment, the court  
33 shall ensure that each party has access to legal representation,  
34 including access early in the proceedings, to preserve each party's  
35 rights by ordering, if necessary based on the income and needs  
36 assessments, one party, except a governmental entity, to pay to  
37 the other party, or to the other party's attorney, whatever amount  
38 is reasonably necessary for attorney's fees and for the cost of  
39 maintaining or defending the proceeding during the pendency of  
40 the proceeding.

(2) When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(b) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(c) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of the proceeding, or any proceeding related thereto, including after any appeal has been concluded.

(d) Any order requiring a party who is not the spouse of another party to the proceeding to pay attorney's fees or costs shall be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.

(e) The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court to implement this section and develop a form for the information that shall be submitted to the court to obtain an award of attorney's fees under this section.

SEC. 5. Section 2032 of the Family Code is amended to read:

2032. (a) The court may make an award of attorney's fees and costs under Section 2030 or 2031 where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties.

(b) In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320. The fact that the party requesting an award of attorney's fees and costs has resources from which the party could pay the party's own



1 attorney's fees and costs is not itself a bar to an order that the other  
2 party pay part or all of the fees and costs requested. Financial  
3 resources are only one factor for the court to consider in  
4 determining how to apportion the overall cost of the litigation  
5 equitably between the parties under their relative circumstances.

6 (c) The court may order payment of an award of attorney's fees  
7 and costs from any type of property, whether community or  
8 separate, principal or income.

9 (d) Either party may, at any time before the hearing of the cause  
10 on the merits, on noticed motion, request the court to make a  
11 finding that the case involves complex or substantial issues of fact  
12 or law related to property rights, visitation, custody, or support.  
13 Upon that finding, the court may in its discretion determine the  
14 appropriate, equitable allocation of attorney's fees, court costs,  
15 expert fees, and consultant fees between the parties. The court  
16 order may provide for the allocation of separate or community  
17 assets, security against these assets, and for payments from income  
18 or anticipated income of either party for the purpose described in  
19 this subdivision and for the benefit of one or both parties. Payments  
20 shall be authorized only on agreement of the parties or, in the  
21 absence thereof, by court order. The court may order that a referee  
22 be appointed pursuant to Section 639 of the Code of Civil  
23 Procedure to oversee the allocation of fees and costs.

24 SEC. 6. Section 2034 of the Family Code is amended to read:

25 2034. (a) On application of either party, the court may deny  
26 the family law attorney's real property lien described in Section  
27 2033 based on a finding that the encumbrance would likely result  
28 in an unequal division of property because it would impair the  
29 encumbering party's ability to meet his or her fair share of the  
30 community obligations or would otherwise be unjust under the  
31 circumstances of the case. The court may also for good cause limit  
32 the amount of the family law attorney's real property lien. A  
33 limitation by the court is not to be construed as a determination of  
34 reasonable attorney's fees.

35 (b) On receiving an objection to the establishment of a family  
36 law attorney's real property lien, the court may on its own motion  
37 determine whether the case involves complex or substantial issues  
38 of fact or law related to property rights, visitation, custody, or  
39 support. If the court finds that the case involves one or more of  
40 these complex or substantial issues, the court may determine the

1 appropriate, equitable allocation of fees and costs as provided in  
2 subdivision (d) of Section 2032.

3 (c) The court has jurisdiction to resolve any dispute arising from  
4 the existence of a family law attorney's real property lien.

5 SEC. 7. Section 2330.3 of the Family Code is amended to read:

6 2330.3. (a) All dissolution actions, to the greatest extent  
7 possible, shall be assigned to the same superior court department  
8 for all purposes, in order that all decisions in a case through final  
9 judgment shall be made by the same judicial officer. However, if  
10 the assignment will result in a significant delay of any family law  
11 matter, the dissolution action need not be assigned to the same  
12 superior court department for all purposes, unless the parties  
13 stipulate otherwise.

14 (b) The Judicial Council shall adopt a standard of judicial  
15 administration prescribing a minimum length of assignment of a  
16 judicial officer to a family law assignment.

17 (c) This section shall be operative on July 1, 1997.

18 SEC. 8. Section 2400 of the Family Code is amended to read:

19 2400. (a) A marriage may be dissolved by the summary  
20 dissolution procedure provided in this chapter if all of the following  
21 conditions exist at the time the proceeding is commenced:

22 (1) Either party has met the jurisdictional requirements of  
23 Chapter 3 (commencing with Section 2320) with regard to  
24 dissolution of marriage.

25 (2) Irreconcilable differences have caused the irremediable  
26 breakdown of the marriage and the marriage should be dissolved.

27 (3) There are no children of the relationship of the parties born  
28 before or during the marriage or adopted by the parties during the  
29 marriage, and the wife, to her knowledge, is not pregnant.

30 (4) The marriage is not more than five years in duration as of  
31 the date of separation of the parties.

32 (5) Neither party has any interest in real property wherever  
33 situated, with the exception of the lease of a residence occupied  
34 by either party which satisfies the following requirements:

35 (A) The lease does not include an option to purchase.

36 (B) The lease terminates within one year from the date of the  
37 filing of the petition.

38 (6) There are no unpaid obligations in excess of four thousand  
39 dollars (\$4,000) incurred by either or both of the parties after the

1 date of their marriage, excluding the amount of any unpaid  
2 obligation with respect to an automobile.

3 (7) The total fair market value of community property assets,  
4 excluding all encumbrances and automobiles, including any  
5 deferred compensation or retirement plan, is less than twenty-five  
6 thousand dollars (\$25,000), and neither party has separate property  
7 assets, excluding all encumbrances and automobiles, in excess of  
8 twenty-five thousand dollars (\$25,000).

9 (8) The parties have executed an agreement setting forth the  
10 division of assets and the assumption of liabilities of the  
11 community, and have executed any documents, title certificates,  
12 bills of sale, or other evidence of transfer necessary to effectuate  
13 the agreement.

14 (9) The parties waive any rights to spousal support.

15 (10) The parties, upon entry of the judgment of dissolution of  
16 marriage pursuant to Section 2403, irrevocably waive their  
17 respective rights to appeal and their rights to move for a new trial.

18 (11) The parties have read and understand the summary  
19 dissolution brochure provided for in Section 2406.

20 (12) The parties desire that the court dissolve the marriage.

21 (b) On January 1, 1985, and on January 1 of each odd-numbered  
22 year thereafter, the amounts in paragraph (6) of subdivision (a)  
23 shall be adjusted to reflect any change in the value of the dollar.  
24 On January 1, 1993, and on January 1 of each odd-numbered year  
25 thereafter, the amounts in paragraph (7) of subdivision (a) shall  
26 be adjusted to reflect any change in the value of the dollar. The  
27 adjustments shall be made by multiplying the base amounts by the  
28 percentage change in the California Consumer Price Index as  
29 compiled by the Department of Industrial Relations, with the result  
30 rounded to the nearest thousand dollars. The Judicial Council shall  
31 compute and publish the amounts.

32 SEC. 9. Section 2403 of the Family Code is amended to read:

33 2403. When six months have expired from the date of the filing  
34 of the joint petition for summary dissolution, the court shall, unless  
35 a revocation has been filed pursuant to Section 2402, enter the  
36 judgment dissolving the marriage. The judgment restores to the  
37 parties the status of single persons, and either party may marry  
38 after the entry of the judgment. The clerk shall send a notice of  
39 entry of judgment to each of the parties at the party's last known  
40 address.

1 SEC. 10. Section 2450 of the Family Code is amended to read:

2 2450. (a) The purpose of family centered case resolution is to  
3 benefit the parties by providing judicial assistance and management  
4 to the parties in actions for dissolution of marriage for the purpose  
5 of expediting the processing of the case, reducing the expense of  
6 litigation, and focusing on early resolution by settlement. Family  
7 centered case resolution is a tool to allow the courts to better assist  
8 families. It does not increase the authority of the court to appoint  
9 any third parties to the case.

10 (b) The court may order a family centered case resolution plan  
11 as provided in Section 2451. If the court orders family centered  
12 case resolution, it shall state the family centered case resolution  
13 plan in writing or on the record.

14 SEC. 11. Section 2451 of the Family Code is amended to read:

15 2451. (a) A court-ordered family centered case resolution plan  
16 may include all of the following:

17 (1) Early neutral case evaluation.

18 (2) Alternative dispute resolution.

19 (3) Limitations on discovery, including temporary suspension  
20 pending exploration of settlement. There is a rebuttable  
21 presumption that an attorney who carries out discovery as provided  
22 in a case management plan has fulfilled his or her duty of care to  
23 the client as to the existence of community property.

24 (4) Use of telephone conference calls to ascertain the status of  
25 the case, encourage cooperation, and assist counsel in reaching  
26 agreement. However, if the court is required to issue an order other  
27 than by stipulation, a hearing shall be held.

28 (5) If stipulated by the parties, modification or waiver of the  
29 requirements of procedural statutes.

30 (6) A requirement that any expert witness be selected by the  
31 parties jointly or be appointed by the court. However, if at any  
32 time the court determines that the issues for which experts are  
33 required cannot be settled under these conditions, the court shall  
34 permit each party to employ his or her own expert.

35 (7) Bifurcation of issues for trial.

36 (8) Any other matters.

37 (b) This section does not provide any additional authority to the  
38 court to appoint experts beyond that permitted under other  
39 provisions of law.

1 (c) The Judicial Council shall, by January 1, 2012, adopt a  
2 statewide rule of court to implement this section.

3 SEC. 12. Section 3027 of the Family Code is amended to read:

4 3027. (a) If allegations of child abuse, including child sexual  
5 abuse, are made during a child custody proceeding and the court  
6 has concerns regarding the child's safety, the court may take any  
7 reasonable, temporary steps as the court, in its discretion, deems  
8 appropriate under the circumstances to protect the child's safety  
9 until an investigation can be completed. Nothing in this section  
10 shall affect the applicability of Section 16504 or 16506 of the  
11 Welfare and Institutions Code.

12 (b) If allegations of child abuse, including child sexual abuse,  
13 are made during a child custody proceeding, the court may request  
14 that the local child welfare services agency conduct an investigation  
15 of the allegations pursuant to Section 328 of the Welfare and  
16 Institutions Code. Upon completion of the investigation, the agency  
17 shall report its findings to the court.

18 SEC. 13. Section 3121 of the Family Code is amended to read:

19 3121. (a) In any proceeding pursuant to Section 3120, and in  
20 any proceeding subsequent to entry of a related judgment, the court  
21 shall ensure that each party has access to legal representation,  
22 including access early in the proceedings, to preserve each party's  
23 rights by ordering, if necessary based on the income and needs  
24 assessments, one party, except a government entity, to pay to the  
25 other party, or to the other party's attorney, whatever amount is  
26 reasonably necessary for attorney's fees and for the cost of  
27 maintaining or defending the proceeding during the pendency of  
28 the proceeding.

29 (b) When a request for attorney's fees and costs is made, the  
30 court shall make findings on whether an award of attorney's fees  
31 and costs under this section is appropriate, whether there is a  
32 disparity in access to funds to retain counsel, and whether one  
33 party is able to pay for legal representation of both parties. If the  
34 findings demonstrate disparity in access and ability to pay, the  
35 court shall make an order awarding attorney's fees and costs. A  
36 party who lacks the financial ability to hire an attorney may request,  
37 as an in pro per litigant, that the court order the other party, if that  
38 other party has the financial ability, to pay a reasonable amount  
39 to allow the unrepresented party to retain an attorney in a timely  
40 manner before proceedings in the matter go forward.

1 (c) Attorney's fees and costs within this section may be awarded  
2 for legal services rendered or costs incurred before or after the  
3 commencement of the proceeding.

4 (d) The court shall augment or modify the original award for  
5 attorney's fees and costs as may be reasonably necessary for the  
6 prosecution or defense of a proceeding described in Section 3120,  
7 or any proceeding related thereto, including after any appeal has  
8 been concluded.

9 (e) Except as provided in subdivision (f), an application for a  
10 temporary order making, augmenting, or modifying an award of  
11 attorney's fees, including a reasonable retainer to hire an attorney,  
12 or costs, or both, shall be made by motion on notice or by an order  
13 to show cause during the pendency of any proceeding described  
14 in Section 3120.

15 (f) The court shall rule on an application for fees under this  
16 section within 15 days of the hearing on the motion or order to  
17 show cause. An order described in subdivision (a) may be made  
18 without notice by an oral motion in open court at either of the  
19 following times:

20 (1) At the time of the hearing of the cause on the merits.

21 (2) At any time before entry of judgment against a party whose  
22 default has been entered pursuant to Section 585 or 586 of the  
23 Code of Civil Procedure. The court shall rule on any motion made  
24 pursuant to this subdivision within 15 days and prior to the entry  
25 of any judgment.

26 (g) The Judicial Council shall, by January 1, 2012, adopt a  
27 statewide rule of court to implement this section and develop a  
28 form for the information that shall be submitted to the court to  
29 obtain an award of attorney's fees under this section.

30 SEC. 14. Section 3150 of the Family Code is amended to read:

31 3150. (a) If the court determines that it would be in the best  
32 interest of the minor child, the court may appoint private counsel  
33 to represent the interests of the child in a custody or visitation  
34 proceeding, provided that the court and counsel comply with the  
35 requirements set forth in Rules 5.240, 5.241, and 5.242 of the  
36 California Rules of Court.

37 (b) Upon entering an appearance on behalf of a child pursuant  
38 to this chapter, counsel shall continue to represent that child unless  
39 relieved by the court upon the substitution of other counsel by the  
40 court or for cause.

1 SEC. 15. Section 3151 of the Family Code is amended to read:

2 3151. (a) The child's counsel appointed under this chapter is  
3 charged with the representation of the child's best interests. The  
4 role of the child's counsel is to gather evidence that bears on the  
5 best interests of the child, and present that admissible evidence to  
6 the court in any manner appropriate for the counsel of a party. If  
7 the child so desires, the child's counsel shall present the child's  
8 wishes to the court. The counsel's duties, unless under the  
9 circumstances it is inappropriate to exercise the duty, include  
10 interviewing the child, reviewing the court files and all accessible  
11 relevant records available to both parties, and making any further  
12 investigations as the counsel considers necessary to ascertain  
13 evidence relevant to the custody or visitation hearings.

14 (b) Counsel shall serve notices and pleadings on all parties,  
15 consistent with requirements for parties. Counsel shall not be called  
16 as a witness in the proceeding. Counsel may introduce and examine  
17 counsel's own witnesses, present arguments to the court concerning  
18 the child's welfare, and participate further in the proceeding to the  
19 degree necessary to represent the child adequately.

20 (c) The child's counsel shall have the following rights:

21 (1) Reasonable access to the child.

22 (2) Standing to seek affirmative relief on behalf of the child.

23 (3) Notice of any proceeding, and all phases of that proceeding,  
24 including a request for examination affecting the child.

25 (4) The right to take any action that is available to a party to the  
26 proceeding, including, but not limited to, the following: filing  
27 pleadings, making evidentiary objections, and presenting evidence  
28 and being heard in the proceeding, which may include, but shall  
29 not be limited to, presenting motions and orders to show cause,  
30 and participating in settlement conferences, trials, seeking writs,  
31 appeals, and arbitrations.

32 (5) Access to the child's medical, dental, mental health, and  
33 other health care records, school and educational records, and the  
34 right to interview school personnel, caretakers, health care  
35 providers, mental health professionals, and others who have  
36 assessed the child or provided care to the child. The release of this  
37 information to counsel shall not constitute a waiver of the  
38 confidentiality of the reports, files, and any disclosed  
39 communications. Counsel may interview mediators; however, the  
40 provisions of Sections 3177 and 3182 shall apply.

1 (6) The right to reasonable advance notice of and the right to  
2 refuse any physical or psychological examination or evaluation,  
3 for purposes of the proceeding, which has not been ordered by the  
4 court.

5 (7) The right to assert or waive any privilege on behalf of the  
6 child.

7 (8) The right to seek independent psychological or physical  
8 examination or evaluation of the child for purposes of the pending  
9 proceeding, upon approval by the court.

10 SEC. 16. Section 3183 of the Family Code is amended to read:

11 3183. (a) Except as provided in Section 3188, the mediator  
12 may, consistent with local court rules, submit a recommendation  
13 to the court as to the custody of or visitation with the child, if the  
14 mediator has first provided the parties and their attorneys, including  
15 counsel for any minor children, with the recommendations in  
16 writing in advance of the hearing. The court shall make an inquiry  
17 at the hearing as to whether the parties and their attorneys have  
18 received the recommendations in writing. If the mediator is  
19 authorized to submit a recommendation to the court pursuant to  
20 this subdivision, the mediation and recommendation process shall  
21 be referred to as “child custody recommending counseling” and  
22 the mediator shall be referred to as a “child custody recommending  
23 counselor.” Mediators who make those recommendations are  
24 considered mediators for purposes of Chapter 11 (commencing  
25 with Section 3160), and shall be subject to all requirements for  
26 mediators for all purposes under this code and the California Rules  
27 of Court. On and after January 1, 2012, all court communications  
28 and information regarding the child custody ~~negotiation and~~  
29 ~~recommendation~~ *recommending counseling* process shall reflect  
30 the change in the name of the process and the name of the  
31 providers.

32 (b) If the parties have not reached agreement as a result of the  
33 mediation proceedings, the mediator may recommend to the court  
34 that an investigation be conducted pursuant to Chapter 6  
35 (commencing with Section 3110) or that other services be offered  
36 to assist the parties to effect a resolution of the controversy before  
37 a hearing on the issues.

38 (c) In appropriate cases, the mediator may recommend that  
39 restraining orders be issued, pending determination of the



1 controversy, to protect the well-being of the child involved in the  
2 controversy.

3 SEC. 17. Section 3557 of the Family Code is amended to read:

4 3557. (a) Notwithstanding any other provision of law, absent  
5 good cause to the contrary, the court, in order to ensure that each  
6 party has access to legal representation to preserve each part's  
7 rights, upon determining (1) an award of attorney's fees and cost  
8 under this section is appropriate, (2) there is a disparity in access  
9 to funds to retain counsel, and (3) one party is able to pay for legal  
10 representation for both parties, shall award reasonable attorney's  
11 fees to any of the following persons:

12 (1) A custodial parent or other person to whom payments should  
13 be made in any action to enforce any of the following:

14 (A) An existing order for child support.

15 (B) A penalty incurred pursuant to Chapter 5 (commencing with  
16 Section 4720) of Part 5 of Division 9.

17 (2) A supported spouse in an action to enforce an existing order  
18 for spousal support.

19 (b) This section shall not be construed to allow an award of  
20 attorney's fees to or against a governmental entity.

21 SEC. 18. Section 6323 of the Family Code is amended to read:

22 6323. (a) Subject to Section 3064:

23 (1) The court may issue an ex parte order determining the  
24 temporary custody and visitation of a minor child on the conditions  
25 the court determines to a party who has established a parent and  
26 child relationship pursuant to paragraph (2). The parties shall  
27 inform the court if any custody or visitation orders have already  
28 been issued in any other proceeding.

29 (2) (A) In making a determination of the best interests of the  
30 child and in order to limit the child's exposure to potential domestic  
31 violence and to ensure the safety of all family members, if the  
32 party who has obtained the restraining order has established a  
33 parent and child relationship and the other party has not established  
34 that relationship, the court may award temporary sole legal and  
35 physical custody to the party to whom the restraining order was  
36 issued and may make an order of no visitation to the other party  
37 pending the establishment of a parent and child relationship  
38 between the child and the other party.

1 (B) A party may establish a parent and child relationship for  
2 purposes of subparagraph (A) only by offering proof of any of the  
3 following:

4 (i) The party gave birth to the child.

5 (ii) The child is conclusively presumed to be a child of the  
6 marriage between the parties, pursuant to Section 7540, or the  
7 party has been determined by a court to be a parent of the child,  
8 pursuant to Section 7541.

9 (iii) Legal adoption or pending legal adoption of the child by  
10 the party.

11 (iv) The party has signed a valid voluntary declaration of  
12 paternity, which has been in effect more than 60 days prior to the  
13 issuance of the restraining order, and that declaration has not been  
14 rescinded or set aside.

15 (v) A determination made by the juvenile court that there is a  
16 parent and child relationship between the party offering the proof  
17 and the child.

18 (vi) A determination of paternity made in a proceeding to  
19 determine custody or visitation in a case brought by the district  
20 attorney pursuant to Section 11350.1 of the Welfare and Institutions  
21 Code.

22 (vii) The party has been determined to be the parent of the child  
23 through a proceeding under the Uniform Parentage Act (Part 3  
24 commencing with Section 7600) of Division 12).

25 (viii) Both parties stipulate, in writing or on the record, for  
26 purposes of this proceeding, that they are the parents of the child.

27 (b) (1) Except as provided in paragraph (2), the court shall not  
28 make a finding of paternity in this proceeding, and any order issued  
29 pursuant to this section shall be without prejudice in any other  
30 action brought to establish a parent and child relationship.

31 (2) The court may accept a stipulation of paternity by the parties  
32 and, if paternity is uncontested, enter a judgment establishing  
33 paternity, subject to the set-aside provisions in Section 7646.

34 (c) When making any order for custody or visitation pursuant  
35 to this section, the court's order shall specify the time, day, place,  
36 and manner of transfer of the child for custody or visitation to limit  
37 the child's exposure to potential domestic conflict or violence and  
38 to ensure the safety of all family members. Where the court finds  
39 a party is staying in a place designated as a shelter for victims of  
40 domestic violence or other confidential location, the court's order

1 for time, day, place, and manner of transfer of the child for custody  
2 or visitation shall be designed to prevent disclosure of the location  
3 of the shelter or other confidential location.

4 (d) When making an order for custody or visitation pursuant to  
5 this section, the court shall consider whether the best interest of  
6 the child, based upon the circumstances of the case, requires that  
7 any visitation or custody arrangement shall be limited to situations  
8 in which a third person, specified by the court, is present, or  
9 whether visitation or custody shall be suspended or denied.

10 SEC. 19. Section 6340 of the Family Code is amended to read:

11 6340. (a) The court may issue any of the orders described in  
12 Article 1 (commencing with Section 6320) after notice and a  
13 hearing. When determining whether to make any orders under this  
14 subdivision, the court shall consider whether failure to make any  
15 of these orders may jeopardize the safety of the petitioner and the  
16 children for whom the custody or visitation orders are sought. If  
17 the court makes any order for custody, visitation, or support, that  
18 order shall, if the court so provides, survive the termination of any  
19 protective order. The Judicial Council shall provide notice of this  
20 provision on any Judicial Council forms related to this subdivision.

21 (b) The court may issue an order described in Section 6321  
22 excluding a person from a dwelling if the court finds that physical  
23 or emotional harm would otherwise result to the other party, to a  
24 person under the care, custody, and control of the other party, or  
25 to a minor child of the parties or of the other party.

26 SEC. 20. Section 328 of the Welfare and Institutions Code is  
27 amended to read:

28 328. Whenever the social worker has cause to believe that there  
29 was or is within the county, or residing therein, a person described  
30 in Section 300, the social worker shall immediately make any  
31 investigation he or she deems necessary to determine whether child  
32 welfare services should be offered to the family and whether  
33 proceedings in the juvenile court should be commenced. If the  
34 social worker determines that it is appropriate to offer child welfare  
35 services to the family, the social worker shall make a referral to  
36 these services pursuant to Chapter 5 (commencing with Section  
37 16500) of Part 4 of Division 9. No inference regarding the  
38 credibility of the allegations or the need for child welfare services  
39 shall be drawn from the mere existence of a child custody or  
40 visitation dispute.

1 However, this section does not require an investigation by the  
2 social worker with respect to a child delivered or referred to any  
3 agency pursuant to Section 307.5.

4 The social worker shall interview any child four years of age or  
5 older who is a subject of an investigation, and who is in juvenile  
6 hall or other custodial facility, or has been removed to a foster  
7 home, to ascertain the child's view of the home environment. If  
8 proceedings are commenced, the social worker shall include the  
9 substance of the interview in any written report submitted at an  
10 adjudicatory hearing, or if no report is then received in evidence,  
11 the social worker shall include the substance of the interview in  
12 the social study required by Section 358. A referral based on  
13 allegations of child abuse from the family court pursuant to Section  
14 3027 of the Family Code shall be investigated to the same extent  
15 as any other child abuse allegation.

16 SEC. 21. Section 827.10 is added to the Welfare and  
17 Institutions Code, to read:

18 827.10. (a) ~~Notwithstanding Section 827, the files and records~~  
19 ~~of a child welfare agency relating to a minor, who is the subject~~  
20 ~~of either a family law or a probate guardianship case involving~~  
21 ~~custody or visitation issues, or both, may be inspected, and copies~~  
22 ~~may be received, by the child welfare agency is authorized to~~  
23 ~~permit its files and records relating to a minor, who is the subject~~  
24 ~~of either a family law or a probate guardianship case involving~~  
25 ~~custody or visitation issues, or both, to be inspected by, and to~~  
26 ~~provide copies to,~~ the following persons, if these persons are  
27 actively participating in the family law or probate case:

28 (1) The judge, commissioner, or other hearing officer assigned  
29 to the family law or probate case.

30 (2) The parent or guardian of the minor.

31 (3) An attorney for a party to the family law or probate case.

32 (4) A family court mediator assigned to a case involving the  
33 minor pursuant to Article 1 (commencing with Section 3160) of  
34 Chapter 11 of Part 2 of Division 8 of the Family Code.

35 (5) A court-appointed investigator, evaluator, or a person  
36 conducting a court-connected child custody evaluation,  
37 investigation, or assessment pursuant to Section 3111 or 3118 of  
38 the Family Code or Part 2 (commencing with Section 1500) of  
39 Division 4 of the Probate Code.

1 (6) Counsel appointed for the minor in the family law case  
2 pursuant to Section 3150 of the Family Code. Prior to allowing  
3 counsel appointed for the minor in the family law case to inspect  
4 the file, the court clerk may require counsel to provide a certified  
5 copy of the court order appointing him or her as the counsel for  
6 the minor.

7 (b) If the child welfare agency files or records, or any portions  
8 thereof, are privileged or confidential pursuant to any other state  
9 law, except Section 827, or federal law or regulation, the  
10 requirements of that state law or federal law or regulation  
11 prohibiting or limiting release of the child welfare agency files or  
12 records, or any portions thereof, shall prevail.

13 (c) A social worker may testify in any family or probate  
14 proceeding with regard to any information that may be disclosed  
15 under this section.

16 (d) Any records or information obtained pursuant to this section,  
17 including the testimony of a social worker, shall be maintained  
18 solely in the confidential portion of the family law or probate file.

19 ~~SEC. 22. If the Commission on State Mandates determines~~  
20 ~~that this act contains costs mandated by the state, reimbursement~~  
21 ~~to local agencies and school districts for those costs shall be made~~  
22 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
23 ~~4 of Title 2 of the Government Code.~~